IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.138 of 2002.

National Insurance Company Limited,
Through its Assistant Manager, Haldwani,
District Nainital. ..... Appellant

Versus

1. Smt. Pabvitriya Devi,
w/o Late Shri Bharat Singh,
2. Smt. Prassanna Devi,
W/o Late Shri Balam Singh,
3. Shri Harinder Singh,
s/o Late Shri Bharat Singh,
4. Shri Dhirendra Singh,
S/o Late Shri Bharat Singh,
5. Km. Neelam D/o Late Shri Bharat Singh,

All resident of Maujamafi, IIP, Mokhempur,
Dehradun, Uttaranchal,

6. United India Insurance Company Limited,
TagoreVilla,Dehradun.....Respondent

And

A.O. No. 10D of 2002.

United India Insurance Co. Ltd.
Through its Divisional Manager,
Divisional Office Tikonia, Nainital Road,
Haldwani, District Nainital,..... Appellant,

Versus

1. Smt. Pabitriya Devi w/o Late Bharat Singh,
2. Smt. Pressana Devi w/o late Balam Singh,
3. Sri Harendar Singh s/o Late Bharat Singh,
4. Dhirendra Singh s/o Late Bharat Singh,
All residents of Majri Mafi, Mohkampur,
District Dehradun.....Claimants/Respondents.

5. Sri Chandra Mohan s/o Sri Kallu Ram,
R/o 59 Gandhi Road, c/o Ahuja Transport Co.
P.S. Kotwali, Dehradun,

6. Sri Julfan s/o Jameel Ahmad,
R/o village Gaille Wala, PS Fatehpur,
District Saharanpur,

7. Sri Raju Singh Rawat, s/o Sri Bachan Singh,
Bachalikhal, Tehri Garhwal.

8. Ved Niketan Dham, Rishikesh
(Pauri Garhwal), through its Manager,
9. National Insurance Co. Ltd.,
Through its Divisional Manager,
Dehradun .....Opposite Party/Respondents.

Sri D.S. Patni, learned counsel for National Insurance Co.,
Sri BC Pandey and Sri Naresh Pant, learned counsel
for United India Insurance Company,
Sri G.S. Negi, learned counsel for the respondent No.5

Coram: Hon. P.C. Verma,J.
Hon. B.S. Verma,J.

Dated: August 21, 2004.

[Per Hon. P.C.Verma, J]

These two appeals arise out of same judgment dated 18.3.2002 passed by Sri R.R. Agrawal, Motor Accident Claims Tribunal/Addl. District Judge, Dehradun (hereinafter referred to as 'Tribunal') in MACP No.75 of 1999, thereby awarding a total compensation of Rs.12,15,000/- against United India Insurance Company, opposite party No.3 and National Insurance Company, opposite party No.6 fixing the liability of both the companies to the extent of 70% and 30% respectively alongwith interest @9% p.a.

Briefly, the facts of the case are that Bharat Singh while traveling in Tata Sumo NO.UP 07G-6740, near Kunwawala, Dehradun became victim of accident when it had a head on collision with Truck No.UP 07F – 7352. There were counter allegations of negligence by the owners of both the vehicles on each other. Issue regarding rash and

negligent driving, liability to pay compensation and if the petition was bad for non joinder of necessary parties, were framed by the Tribunal. The learned Tribunal on a consideration of available evidence found that the driver of the truck was negligent to the extent of 70% while the driver of Tata Sumo to the extent of 30% and accordingly finding it to be a case of contributory negligence in the above manner, apportioned the liability of insurers of both the vehicles.

We have heard the learned counsel for both the parties and have perused the record. Both the appellants have tried to shift the liability on the other vehicle and have defended the negligence of the vehicle inured by them. The National Insurance Company has urged that it had raised the point in its written statement that the driver of Tata Sumo insured by it had no valid driving licence at the time of accident and the vehicle was being plied without a valid route permit. The United India Insurance Company has urged that both the owners of vehicle are in collusion and both the appellants have also challenged the quantum of compensation. It is the case of the petitioners that the Tata Sumo was being driven at slow speed by its driver when the truck came from opposite direction with all rashness and on wrong side dashing the Tata Sumo, causing injuries to the passengers and damaging the vehicle. Bharat Singh died onway to hospital. This case is strongly supported by PW2 Yashwant Singh Negi who is an eye witness of the accident and remained firm even in his cross examination. However, he was stated that he had visualized the truck approaching from opposite direction quite in advance.

The learned Tribunal has on the evidence before it, has found that the Tata Sumo was on his side and stopped at left kuchcha portion of the road while the truck had deviated from his side resulting the collision. It is also clear from the evidence that the truck had been seen coming from front side by the witness and likewise by the driver of Tata Sumo quite

sometime before the accident and has attributed some negligence on its driver as well. The Tribunal has also considered the prompt lodging of F.I.R. by Raju Singh Rawat, the siteplan and the fact that both the insurance companies have failed to support their respective case to establish breach of policy conditions and the opposite parties have not examined their drivers or any other oral evidence which could be helpful to them to have their say about the accident. The appellants have not been able to change this position in appeal as well. The Tribunal has also given adequate reason for holding the Tata Sumo contributing in the accident because had its driver been a little more vigilant on seeing the truck coming from front side well in advance, the accident could have been averted. There is nothing wrong in the quantum of compensation fixed by the Tribunal and it has taken care of all aspects of the matter and in view of the degree of negligence by each driver, the ratio of quantum fixed by the Tribunal also appears to be quite justified.

We also find no force in the contention made on behalf of both the appellants on the point of contributory negligence of both the drivers and the ratio thereof. The grounds of challenge available to the insurer/appellants have been enumerated in sub/section (2) of Section 149 of the Act and no other ground is available to the insurance company. No permission under section 170 of the Act has been sought before and granted by the Tribunal to the appellants to contest the case on the grounds available to the insured or the person against whom claim has been preferred. The law provides for an appeal by the insurer on limited grounds and the grounds of challenge cannot be enlarged. We my refer to the law laid down by the Apex Court in the case of National Insurance Company Ltd. Chandigarh vs. Nicolletta Rohtagi andothers, (2002) 7, Supreme Court Cases, 456, that even if no appeal is preferred under S.173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of

compensation as well as findings as regard negligence or contributory negligence of the offending vehicle.

We accordingly find that both the appeals have no force and are liable to be dismissed.

Both the appeals are hereby dismissed and the award of compensation dated 18.3.2002 passed by Motor Accident Claims Tribunal/Addl. District Judge, Dehradun is hereby affirmed.

The amount of award, if deposited in the High Court by the opposite parties-appellants, be remitted to the Tribunal for disbursement.

(B.S.Verma,J.) (P.C.Verma,J.)

SPA/August 21, 04.